REMARKS

In the Office Action, claims 11-20, 29 and 30 were withdrawn from consideration, claims 1, 4, 5, 9, 10, 21, 22, 25 and 28 were rejected, and claims 2, 3, 6-8, 23, 24, 26 and 27 were objected to. By the present Response, claims 9 and 28 are amended. Upon entry of the amendments, claims 1-10 and 21-28 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are respectfully requested.

Page 11 of the Specification is amended to address a typographical error. The slot numbering in Table 2 was inadvertently shown as three sets of numbers 1-24, and is now amended to be consistent with Fig. 5 in correctly numbering the slots as a single set of numbers 1-72.

Rejections Under 35 U.S.C. § 112

Claims 9 and 28 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner asserted that the claims are omnibus type claims, with the claims failing to point out what is included or excluded by the claim language.

Omnibus type claims expressly reference the specification and/or drawings and are typically appropriately rejected under § 112, second paragraph. *Ex parte Fressola*, 27 U.S.P.Q.2d 1608, 1609 (Bd. Pat. App. & Inter. 1993) (referencing McCrady, *Patent Office Practice*, § 90) (3d ed. 1950)). However, in very limited circumstances, omnibus claims are permitted "where there is no practical way to define the invention in words and where it is more concise to incorporate by reference than duplicating a drawing or table into the claim." *Id.* (citing *Landis* § 51) (other citations omitted).

Applicant does not necessarily agree with the Examiner's assertion that claims 9 and 28 should be rejected under § 112 as omnibus claims. However, in an effort to advance prosecution, claims 9 and 28 are amended to incorporate the information of the

referenced Table 2 (of the Written Description) directly into the rejected claims. *See Ex parte Bivens*, 53 U.S.P.Q.2d 1045, 1046 (Bd. Pat. App. & Inter. 1999) (unpublished) (holding that "there is nothing intrinsically wrong with the use of [charts and diagrams] in drafting patent claims") (citing *In re Brown*, 173 U.S.P.Q. 685, 688 (C.C.P.A. 1972)). Accordingly, withdrawal of the Examiner's rejections of claims 9 and 28 is respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 1, 4, 5, 10, 21, 22 and 25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Luttrell (U.S. Patent 6,349,463). Applicant respectfully traverses this rejection. The Examiner has failed to establish a *prima facie* case of anticipation.

Applicant asserts that the Luttrell reference is not valid prior art under § 102(e), which states, in part, that a person shall be entitled to a patent unless the invention was described in (1) an application for a patent, published under section 122(b), *by another* filed in the United States . . . or (2) a patent granted on an application for patent *by another* filed in the United States." (Emphasis added). Here, the same person, C.W. Luttrell, is the sole inventor in the cited reference and the present application. Therefore, the cited reference is not a patent "by another." The plain language of the statute makes it clear that *one's own work* is not a valid prior art reference under §102 (e). Indeed, the Federal Circuit recently held that "an application issued to the same inventive entity cannot be prior art under 102 (e)." *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 66 U.S.P.Q.2d 1331, 1338 (Fed. Cir. 2003); *see also* M.P.E.P. 715.01 (c) ("Unless it is a statutory bar, a rejection based on a publication may be overcome by a showing that it was published either by applicant himself/herself or on his/her behalf.")

Here, under the applicable § 102(e)(2), the present Applicant shall be entitled to a patent because Applicant's invention was *not* described in a patent granted on an

application for patent "by another" filed in the United States before the invention by the Applicant. Instead, the sole inventor of both the present application and the cited reference are the same person, Applicant C. W. Luttrell. Thus, the cited reference is not valid prior art under § 102(e). Therefore, Applicant requests withdrawal of the Examiner's rejections and allowance of claims 1, 4, 5, 10, 21, 22 and 25.

Allowable Subject Matter

Claims 2, 3, 6-8, 23, 24, 26 and 27 were objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form. Applicant would like to thank the Examiner for indicating the allowability of these claims. However, for the reasons provided above, the Applicant believes that all the claims of the present application are patentable in their present form.

Conclusion

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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